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Message Text

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ACTION OPIC-06

INFO OCT-01 EA-10 ISO-00 EB-07 JUSE-00 L-03 AID-05 COME-00

OMB-01 TRSE-00 CIAE-00 INR-07 NSAE-00 IGA-01 SP-02

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P 220940Z JUL 75
FM AMEMBASSY BANGKOK
TO SECSTATE WASHDC PRIORITY 8144

UNCLAS SECTION 1 OF 5 BANGKOK 14752

E.O. 11652: N/A

PASS OPIC

SUBJ: CALABRIAN LITIGATION

REF : STATE 169643

FOLLOWING IS VERBATION LITERAL TRANSLATION OF OPINION OF COURT OF
APPEALS DATED 29 MAY 1974:
MR. HENRY A. MUCCI, 1ST PLAINTIFF, MR. ALBERT LYMAN, 2 ND PLAINTIFF,
THE CALABRIAN COMPANY, INC. BY MR. WATANA ISSARAPHAKDI, ATTORNEY,
3RD PLAINTIFF. VERSUS
MR.REY M. HILL, 1ST DEFENDANT, MR. OSBORNE I. HAUGE, 2ND
DEFENDANT, MR. CHITCHNA-KAMPHU, 3RD DEFENDANT AND THE BANGKOK BANK,
LTD. 4TH DEFENDANT.
RE-INCORPORATION (REVOCATION OF BOARD OF DIRECTOR)
ALL THE THREE PLAINTIFFS INVOKE THE APPEAL AGAINST THE VERDICT OF
THE CIVIL COURT DATED JUNE 28, 1974.
THE PLAINTIFFS PROCEEDED THAT THE 3RD PLAINTIFF WAS A JURISTIC PERSON
INCORPORATED IN U.S.A. THE THIRD PLAINTIFF WAS THE HOLDER OF A
MAJORITY OF SHARES OF STOCK OF THE CALABRIAN (THAILAND) COMPANY
LIMITED WHEREOF THE 1ST AND 2ND PLAINTIFFS SERVED AS DIRECTORS
TOGETHER WITH ANOTHER TWO DIRECTORS. IN MAKING THE INVESTMENT AS TO
TAKING STOCK IN THE CALABRIAN (THAILAND) CO., LTD., THE 3RD
PLAINTIFF SPENT THEIR OWN MONEY AND THE LOAN BORROWED FROM THE
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CHEMICAL BANK NEW YORK TRUST COMPANY BY MORTGAGING 512,070 SHARES OF

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STOCK TO THIS BANK AT 60 PERCENT OF THE ACTUAL VALUE OF THE STOCK.
THE AGENCY FOR INTERNATIONAL DEVELOPMENT, OR AID, WAS THE GUARANTOR
FOR THIS AMOUNT OF LOAN UNDER THE INVESTMENT RISK GUARANTY
CONDITIONS UNDER THE POLICY OF THE U.S. GOVERNMENT IN PROVIDING THE
INVESTMENT RISK GUARANTY FOR AMERICAN BUSINESSMEN MAKING INVESTMENT
OUTSIDE THE COUNTRY. LATER THE CHEMICAL BANK NEW YORK TRUST COMPANY
VIOLATED THE LAW AND BREACHED THE LOAN CONTRACT AS TO ATTEMPTING TO
FORECLOSE THE STOCK MORTGAGED BY THE THIRD PLAINTIFF WITHOUT TAKING
RIGHTFUL ACTION IN ENFORCEMENT OF THE MORTGAGE RULES IN ACCORDANCE WI
TH
THE SECTION 767 OF THE CIVIL AND COMMERCIAL CODE UNDER WHICH THE
MORTGAGED SHARES OF STOCK WOULD BE REQUIRED TO BE SOLD AT AUCTION,
BECAUSE THE STOCK OF THE THIRD PLAINTIFF WAS MORTGAGED AT ONLY 60 PER
CENT OF ITS ACTUAL VALUE; THEREFORE, AN AMOUNT WOULD BE LEFT OVER
FROM THE PROCEEDS OF THE AUCTION SALE OF THE STOCK TO BE RETURNED
TO THE THIRD PLAINTIFF. ON THE CONTRARY THE CHEMICAL BANK FORECLOSED
THE STOCK OF THE THIRD PLAINTIFF AND TRANSFERRED IT TO AID WITHOUT
LISTENING TO THE PROTEST OF THE THIRD PLAINTIFF; AND AID DID NOT
COMPLY WITH THE CONDITIONS STIPULATED IN THE INVESTMENT RISK GUARANTY
AGREEMENT WHICH STATED THAT IT HAD TO BE EVIDENCED THAT THE SHARES
OF STOCK MORTGATED AT THE BEGINNING WERE OF NO VALUE AND THE THIRD
DEFENDANT (WHICH SHOULD BE THE THIRD PLAINTIFF) WHO MADE AN
INVESTMENT OUTSIDE THE COUNTRY REQUESTED FOR ASSISTANCE BEFORE AID
COULD MAKE THE PAYMENT ACCORDING TO THE LIABILITY GUARANTEED TO THE
CHEMICAL BANK. NEVETHELESS, AID CONSPIRED WITH THE CHEMICAL BANK IN
TERMS OF MAKING PAYMENT OF THE LIABLE AMOUNT TO THE BANK AND FORECLOS
ED
THE STOCK OF THE THIRD PLAINTIFF WHICH WAS ILLEGAL AND VIOLATED THE
AGREEMENT, BECAUSE THERE WAS AN INDUCEMENT THAT MADE AID DEVELOP A
PLAN TO SELL THE UNRIGHTFULLY FORECLOSED SHARES OF STOCK TO OTHER
MERCHANTS IN THE U.S. AT HIGH PRICE, BECAUSE THE CALABRIAN (THAILAND)
CO.,LTD. POSSESSED A PROPERTY OF 16 SILOS OF GREAT VALUE. THE THIRD
PLAINTIFF THEREFORE MADE A PROTEST TO THE CALABRIAN (THAILAND) CO., L
TD.
AS TO NOT ALLOWING TO HAVE THE STOCK TRANSFERRED TO AID OR AID'S RE-
PRESENTATIVE. IT WAS ALSO INFORMED THAT THE DISPUTE HAD ALREADY
BEEN SUBMITTED TO THE ARBITRATOR IN THE U.S., THE CASE WAS UNDER
CONSIDERATION. MOREOVER, THE FORECLOSURE OF THE STOCK, TRANSFER OF
THE STOCK TO THE CHEMICAL BANK OR TRANSFER OF THE STOCK FROM THE
CHEMICAL BANK TO AID WAS NOT PERFORMED IN ACCORDANCE WITH THE PATTERN
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AND CONDITIONS OF LAW; AND AID COULD NOT HOLD SHARES OF STOCK
UNDER THE U.S. AND THAI LAWS BECAUSE OF NOT HAVING THE CONDITION OF
BEING A PERSON AND NOT HAVING THE OBJECTIVE TO TAKE STOCK AND
TRANSACT BUSINESS LIKE GENERAL BUSINESS FIRMS. LATER THE CALABRIAN
(THAILAND) CO., LTD. WAS INFORMED BY THE FOURTH DEFENDANT, WHO AT
THE TIME MAINTAINED THE STOCKHOLDER ROSTER OF THE COMPANY, THAT
THE CHEMICAL BANK HAD REQUESTED TO HAVE THE STOCK, FORECLOSED FROM
THE THIRD PLAINTIFF TRANSFERRED TO THE NAME OF THE CHEMICAL BANK AND

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TO HAVE IT TRANSFERRED THEREFROM TO THE NAME OF AID; AND THE FOURTH DEFENDANT WANTED TO COMPLY WITH THE SAID REQUEST WHICH HAD BEEN CONSIDERED BY THE BOARD OF DIRECTORS OF THE CALABRIAN (THAILAND) CO., LTD. TO BE UNLAWFUL. FURTHERMORE, SECTION 3 OF THE BY-LAWS OF THE COMPANY PROVIDES THAT A DIRECTOR MAY REFUSE THE REGISTRATION OF TRANS FER
OF ANY SHARES OF STOCK TO ANY PERSON DISAPPROVED BY THE DIRECTOR TO BECOME A STOCKHOLDER OF THE COMPANY; AND IN THIS CASE THE DIRECTOR OF THE COMPANY DID NOT APPROVE TO ADMIT THE CHEMICAL BANK OR AID AS THE STOCKHOLDER OF THE COMPANY. THE BOARD OF DIRECTORS OF THE COMPANY THEREFORE ISSUED AN ORDER TO THE FOURTH DEFENDANT REFUSING TO APPROVE THE REGISTRATION OF TRANSFER OF STOCK TO THE CHEMICAL BANK AND AID. HOWEVER, IT WAS EVIDENCED THAT THE FOURTH DEFENDANT ACTED DIFFERENTLY FROM THE BY-LAWS OF THE SAID COMPANY AND VIOLATED THE ORDER OF THE BOARD OF DIRECTORS IN TERMS OF COMMITTING A DARING DEED IN REGISTERING IN THE STOCKHOLDER RECORD THE CHEMICAL BANK AND AID BE ING
THE STOCKHOLDERS OF THE COMPANY. THE STOCKHOLDER EEGISTER MADE BY THE FOURTH DEFENDANT WAS THEREFORE ILLEGAL AND VIOLATED THE WHITEHOUSE

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OMB-01 TRSE-00 CIAE-00 INR-07 NSAE-00 IGA-01 SP-02

/043 W
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P 220940Z JUL 75
FM AMEMBASSY BANGKOK
TO SECSTATE WASHDC PRIORITY 8145

UNCLAS SECTION 2 OF 5 BANGKOK 14752

E.O. 11652: N/A

PASS OPIC

BY-LAWS OF THE COMPANY AS WELL AS DID NOT BECOME BINDING TO THE COMPANY. WHEN THE BOARD OF DIRECTORS OF THE CALABRIAN (THAILAND)

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CO., LTD. HAD FOUND THAT THE FOURTH DEFENDANT DISOBEYED THE ORDER
OF THE BOARD AND VIOLATED THE BY-LAWS AS DESCRIBED, THE BOARD THEN
ISSUED ANOTHER ORDER ON DECEMBER 30, 1968 TO REMOVE THE FOURTH
DEFENDANT FROM OFFICE OF KEEPER OF THE COMPANY'S STOCKHOLDER
ROSTER, AND INFORMED THE FOURTH DEFENDANT TO RETURN THE STOCK-
HOLDER ROSTER TO THE BOARD, BUT THE FOURTH DEFENDANT DID NOT
RETURN THE ROSTER.
SUBSEQUENTLY, THE FIRST DEFENDANT FORCEDLY CONVOKED A MEETING OF
STOCKHOLDERS ALTHOUGH HE WAS NOT A LAWFUL STOCK-HOLDER OF THE
COMPANY WHICH THE BOARD HAD INFORMED THE FIRST DEFENDANT THAT
IT COULD NOT BE EFFECTUATED THAT WAY. HOWEVER, THE DEFENDANT
STILL VIOLATED BY CALLING THE MEETING OF STOCKHOLDERS ON JANUARY
31, 1969, THE MINUTES WHERE OF WEERE RECORDED AND SUBMITTED TO
THE PARTNERSHIP AND COMPANY DIVISION, MINISTRY OF ECONOMIC
AFFAIRS BY WHICH THE FORMER DIRECTORS WERE REMOVED FROM
OFFICE AND THE FIRST, SECOND AND THIRD DEFENDANTS WERE
APPOINTED THE DIRECTORS OF THE COMPANY. THIS MEETING WAS PRO-
TESTED BY THE PLAINTIFFS AS TO THE FORUM NOT BEING CONSTITUTED,
SINCE THE FIRST DEFENDANT WAS NOT A LAWFUL STOCKHOLDER OF THE
COMPANY AND DID NOT HAVE ANY RIGHT TO PARTICIPATE IN THE MEETING
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AND TO MAKE A VOTE FOR DECISION AS A STOCKHOLDER. BESIDES,
MANY INDIVIDUALS WHO WERE NOT THE STOCKHOLDERS WERE FOUND TO
PARTICIPATE IN THE MEETING WHICH WAS NOT RIGHTFUL. BEFORE
THE SAID MEETING WAS HELD, THE DEFENDANT WAS AFRAID THAT THE
PARTNERSHIP AND COMPANY REGISTRAR WOULD NOT MAKE THE REGISTRATION,
BECAUSE THE VARIOUS EVIDENCES SHOWED THAT THE DEFENDANT WAS NOT THE
STOCKHOLDER AND DID NOT HAVE THE RITHT TO CONVOKE THE MEETING, THE
DEFENDANT THUS USED HIS INFLUENCE AS TO WRITING A LETTER DATED
JANUARY 30, 1972, TO THE MINISTER OF ECONOMIC AFFAIRS INFORMING
THAT THE DEFENDANT WOULD HOLD A MEETING OF THE STOCKHOLDERS ON THE
FOLLOWING DAY, JANUARY 31, 1969, BUT WAS AFRAID THAT THE BOARD
OF DIRECTOS OF THE COMPANY WOULD PROTEST THE REGISTRATION AND
THEREFORE REQUESTED ASSISTANCE FROM THE MINISTER IN REGARD TO THE
SUBMISSION OF DOCUMENTS BY HAVING THE OFFICIALS REGISTER THE
MINUTES OF THE SAID MEETING AND THE NEW BOARD OF DIRECTORS OF THE
COMPANY. INFORMATION WAS MADE THAT THE SUBMISSION WOULD BE
UNDERTAKEN ON THAT FOLLOWING DAY. SUCH ACTION OF THE DEFENDANT
WAS TO USE THE INFLUENCE AND DECEIVING TRICKS IN ORDER TO COMPEL
THE PARTNERSHIP AND COMPANY REGISTRAR TO BE UNABLE TO USE HIS
JUDGMENT FAIRLY. THE UNRIGHTFUL DEED OF THE DEFENDANT RESULTED
IN THE REGISTER NOT BEING CARRIED OUT RIGHTFULLY AS IT SHOULD.
THE DEFEDANT COULD HAVE THE REGISTRATION COMPLETED BY TWO DAYS
ALTHOUGH THERE WAS NO STOCK CERTFICATE STATING THE NAME OF
THE DEFENDANT. MOST OF THE DOCUMENTS SUBMITTED BY THE DEFENDANT
TOGETHER WITH MINUTES OF THE MEETING WERE NOT TRANSLATED INTO
THAI. THE PLAINTIFF WENT AND WAITED TO PROVIDE EXPLANATION TO THE
REGISTRAR AND NOTIFIED THE REGISTRY DIVISION IN WRITING AND
ORALLY AS TO THERE BEING A LOT OF EVIDENCES PROVING THAT THE

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DEFENDANT WAS NOT A STOCKHOLDER,HE HAD NO RIGHT TO CONVOKE THE MEETING, ROSTER OF STOCKHOLDERS BECAME VOID, AND SUCH MEETING WAS NOT RIGHTFULLY HELD. A REQUEST WAS MDE THAT NO SUCH REGISTER BE MADE, BUT NO OPPORTUNITY WAS OPENED TO THE PLAINTIFF TO EXPLAIN AND SHOW THE EVIDENCES. THE REGISTRAR MADE THE REGISTRATION FOR THE DEFENDANT WHICH THE PLAINTIFF HAD PROTESTED. THIS COULD BE CONCLUDED THAT THE TRANSFER OF STOCK TO AID THE LIST OF STOCKHOLDERS, CONVOCATIONOF THE MEETING OF THE STOCKHOLDERS, THE DECISIONOF THE MEETING OF THE SOTCKHOLDERS, THE REGISTRATION OF THE DIRECTORS WERE UNLAWFUL. THE PLAINTIFF HAD MADE CONTACT TO THE DEFENDANT ASKING TO REGISTER THE CORRECTION OF STATEMENTS TO READ THE SAME AS THEY DID BEFORE, BUT THE DEFENDANT DID NOT COMPLY WITH THE REQUEST WHICH CAUSED THE PLAINTIFF TO UNDERGO
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SUFFERING. THE COURT WAS THEREFORE REQUESTED TO RULE THAT THE REGISTRATION OF AID AS A STOCKHOLDER AS MADE BY THE FOURTH DEFENDANT AND THE STOCKHOLDER ROSTER SUBMITTED TO THE REGSTRAR BE UNALWFUL AND BECOME VOID AND THE CONVOCATIONOF THE SPECIAL MEETING BE UNLAWFUL AND HAVE NO LEGAL EFFECTS, THE MINUTES AND DECISIONS OF THE SPECIAL MEETING OF THE CALABRIAN (THAILAND) CO., LTD. AS HELD ON JANUARY 31, 1969 BE REPEALED, THE APPLICATION FOR REGISTRATION AND THE REGISTER OF THE BOARD OF DIRECTORS OF THE CALABRIAN (THAILAND) CO., LTD. DATED JANUARY 31, 1969 BE NULL AND VOILD AND BE REPEALED AND THE PROCEEDING STATUS OF THE PLAINTIFF BE REVIVED, THE FIRST, SECOND AND THIRD DEFENDANTS BE FORCED TO SUBMIT A REQUEST TTO THE PARTNERSHIP AND COMPANY REGISTRAR FOR REVOCATION OF THE DIRECTORS REGISTR-TION APPLICATION DATED JANUARY 31, 1969, AND IF THE DEFENDANTS DID NOT FILE THE SAID APPLICATION, THE OPINION OF THE COURT BE REGARDED AS DECLARATIONOF THE INTENTIONOF THE DEFENDANTS, AND ALL THE FOUR DEFENDANTS BE REQUIRED TO PAY COURT AND LAWYER FEES FOR THE PLAINTIFFS. THE FIRST AND THIRD DEENDANT ADMITTED THAT THE THIRD PLAINTIFF WAS A JURISTIC PERSON REGISTERED IN THE US, BUT THEY DENIED ALL OTHER CHARGES. THE DEFENDANTS REPROVED THAT THE PLAINTIFFS WERE NOT EMPOWERED TO BRING THE CASE TO THE COURT. THE THIRD PLAINTIFF DID NOT MORTGAGE THE STOCK TO THE CHEMICAL BANK. IN FACT, THE THIRD PLAINTIFF HAD TRANSFERRED THE RIGHT PROPERTY AND BENEFITS UNDER THE INVESTMENT GUARANTY AGREEMENT TO THE CHEMICAL BANK, AND ASSIGNED TO THE CHEMICAL BANK THE CERTIFICATES OF 512,070 SHARES OF STOCK IN THE CALABRIAN (THAILAND) COMPANY LIMITED BELONGING TO THE THIRD PLAINTIFF TOGETHER WITH THE STOCK TRANSFER DEED SIGNED BY THE THIRD PLAINTIFF AS THE TRANSFEROR, LEAVING A BLANK SPACE FOR THE NAME OF THE TRANSFEREE. THE CHEMICAL BANK HAD BECOME "THE INVESTOR" UNDER THE SAID GUARANTY AGREEMENT. WHEN THE CHEMICAL BANK WANTED TO EXERCISE THE RIGHT TO MAKE A CLAIM UNDER THIS GUARANTY AGREEMENT, THE STOCK WOULD THEN HAVE TO BE TRANSFERRED TO THE US GOVERNMENT. THE CHEMICAL BANK CLAIMED REPAYMENT OF THIS INDEBTEDNESS FROM THE THIRD PLAINTIFF, BUT THE THIRD PLAINTIFF

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FAILED TO MAKE THE REPAYMENT. THE CHEMICAL BANK THEREFORE
EXERCISED THE RIGHT TO ESTABLISH A CLAIM UNDER THE INVESTMENT
RISK GUARANTY AGREEMENT FROM THE US GOVERNMENT.
WHITEHOUSE

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P 220940Z JUL 75
FM AMEMBASSY BANGKOK
TO SECSTATE WASHDC PRIORITY 8146

UNCLAS SECTION 3 OF 5 BANGKOK 14752

E.O. 11652: N/A

PASS OPIC
THE US GOVERNMENT HAD THE OPINION THAT THE CALABRIAN(THAILAND)
COMPANY LIMITED HAD INCURRED A LOSS OF 50 MILLION BAHT RESULTING
IN THE STOCK OF THE COMPANY BEING WORTHLESS, AND THUS MADE THE FULL
PAYMENT OF US$1,500,000 TO THE CHEMICAL BANK IN ACCORDANCE WITH THE
INVESTMENT RISK GUARANTY AGREEMENT SO AS TO REPAY THE LOAN INDEBTED-
NESS FOR THE THIRD PLAINTIFF; THEN ACCEPTED THE TRANSFER OF 512,070
SHARES OF STOCK FROM THE CHEMICAL BANK. THE PLAINTIFF COULD NOT
PROTEST THE SAID TRANSFER OF STOCK, BECAUSE THEIR SHARES OF STOCK
HAD EARLIER BEEN ALL TRANSFERRED TO THE CHEMICAL BANK. THE CHEMICAL
BANK AND US GOVERNMENT HAD CORRECTLY COMPLIED WITH THE CONDITIONS OF
THE GUARANTY. THE US GOVERNMENT, THROUGH AID, ACTED FOR BY
THE FIRST DEFENDANT AS THE REPRESENTATIVE IN THE STATUS OF THE
PERSON HOLDING MORE THAN ONE FIFTH OF THE TOTAL NUMBER OF SHARES
OF STOCK OF THE CALABRIAN (THAILAND) COMPANYLIMITED, EARNED
RIGHT TO LEGALLY CONVOKE THE SPECIAL MEETING OF STOCKHOLDERS.
THE SPECIAL MEETING OF STOCKHOLDERS MADE A DECISION TO REMOVE ALL THE
MEMBERS OF THE PRECEDING BOARD OF DIRECTORS INCLUDING THE FIRST AND
SECOND PLAINTIFFS FROM OFFICE, THEN APPOINTED THE FIRST, SECOND
AND THIRD DEFENDANTS TO FILL IN THE OFFICES OF DIRECTORS. THESE ACTS
WERE FIGHTFUL IN ACCORDANCE WITH LAWS AND THE COMPANY'S BY-LAWS.

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THE FOURTH DEFENDANT, WHO SERVED AS THE STOCKHOLDER REGISTRAR AND
AS THE REPRESENTATIVE OF THE CALABRIAN (THAILAND) COMPANY LIMITED
IN THE TRANSFER OF STOCK, REGISTERED THE TRANSFER OF STOCK
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RIGHTFULLY IN ACCORDANCE WITH THE LAWS AND THE COMPANY'S BY-LAWS.
THE DEFENDANTS NEVER USED THEIR INFLUENCE TO FORCE THE CENTRAL
PARTNERSHIP AND COMPANY REGISTRAR IN REGISTERING TO REMOVE THE
PRECEDING BOARD OF DIRECTORS FROM OFFICE AND TO APPOINT REPLACEMENT.
THE SECOND DEFENDANT TESTIFIED AND REPROVED WITH THE SAME IMPORTANCE
AS THE TESTIMONY OF THE FIRST AND THIRD DEFENDANTS.
THE FOURTH DEFENDANT TESTIFIED WITH IMPORTANCE THAT THE CHARGE OF
THE PLAINTIFF WAS NOT THE CHARGE AND WAS AMBIGUOUS. THE DEFENDANTS
WERE NOT EMPOWERED TO SUE THEFOURTH DEFENDANT TND REPROVED THAT
THE FOURTH DEFENDANT WAS AUTHORIZED TO ACT FOR THE CALABRIAN
(THAILAND) COMPANY LIMITED IN TRANSFER OF THE STOCK OF THE COMPANY
ON WHICH ACTION WAS TAKEN BY THE FOURTH PLAINTIFF BY ITSELF WHEN
BEING CONTACTED BY THE TRANSFEROR AND TRANSFEREE WITHOUT REQUESTING
APPROVAL OR AGREEMENT FROM THE COMPANY. IN TRANSFERRING THE STOCK
IN THIS CASE THE FOURTH DEFENDANT HONESTLY PERFORMED ITS DUTIES
IN ACCOREANCE WITH THE POWER; THE EXHIBIT NO. 3 ATTACHED TO THE
CHARGE DID NOT REQUIRE THEREVOCATION OF THE TRANSFER WHICH HAD
ALREADY BEEN EFFECTUATED.
THE COURT OF FIRST INSTANCE HAD THE OPINION THAT AID ACCEPTED THE
TRANSFER OF 512,070 SHARES OF STOCK LEGALLY WHICH WAS NOT THE
FORECLOSURE OF THE STOCK, THE CALLING OF THE SPECIAL STOCKHOLDERS
MEETING AS WELL AS THE REGISTRATIONOF DIRECTORS WAS LAWFULLY
CONDUCTED, AND THE TRANSFER OF STOCK ACCOMPLISHED BY THE FOURTH
DEFENDANT HAD BECOME BINDING TO THE CALABRIAN(THHAILAND) COMPANY
LIMITED. THEREFORE, THE COURT MADE THE DECISION TO DISMISS THE
CHARGE OF THE PLAINTIFFS AND REQUIRE THE PLAINTIFFS TO PAY THE
COURT AND LAWYER FEES IN THE AMOUNT OF 300 BAHT FOR THE DEFENDANTS.
ALL THE THREE PLAINTIFFS FILED APPEAL.
THE COURT OF APPEAL HAS REVIEWED AND DISCUSSED THE CASE, AND HAS
AN OPINION THAT THE REQUEST OF THE PLAINTIFFS AND DEFENDANTS TO
MAKE ORAL STATEMENTS IS NOT NECESSARY AND IS NOT ALLOWED. THE FACTS
ARE FINALLY PLAUSIBLE (I.E., ESTABLISHED AHAT) AT THE BEGINNING
THAT THE CALABRIAN(THAILAND) COMPANY LIMITED HAD THE REGISTERED
CAPITAL OF BAHT 100,000,000 DIVIDING INTO 1,000,000 SHARES OF STOCK
AT THE PAR VALUE OFBAHT 100. PREVIOUSLY, THE FIRST AND SECOND
DEFENDANTS SERVED AS DIRECTORS AND THE THIRD PLAINTIFF WAS THE HOLDER
OF 512,070 SHARES OF STOCK. THE THIRD PLAINTIFF SUBSEQUENTLY
INVESTED AN ADDITIONAL AMOUNT OF US$2,500,000;OF THIS AMOUNT,
US$1,500,000 WAS A LOAN SECURED FROM THE CHEMICAL BANK NEW YORK
TRUST COMPANY AS PER EXHIBIT NO. 35. IN THIS REGARD THE THIRD PLAINTI
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ISSUED TO THE CHEMICAL BANK TWO BILLS OF EXCHANGE, ONE IN THE AMOUNT OF US$340,000 AND THE OTHER IN THE AMOUNT OF US$1,160,000;
TOGETHER WITH THESE THE THIRDPLAINTIFF MADE AN AGREEMENT WITH THE CHEMICAL BANK OF A MORTGAGE OF THE STOCK AS PER EXHIBIT NO. LAW 14. AID MADE AN INVESTMENT RISK GUARANTY AGREEMENT WITH THE THIRD PLAINTIFF AS PER EXHIBITNO. LAW 15 (LAW 5) AND THE THIRD PLAINTIFF MA DE
AN AGREEMENT TO TRANSFER THE RIGHTS UNDER THE INVESTMENT RISK GUARANTY AGREEMENT TO THE CHEMICAL BANK AS PER EXHIBIT NO. LAW 6. BESIDES, THE THIRD PLAINTIFF AND THE CHEMICAL BANK AND AID MADE AN AGREEMENT TO AUTHORIZE AID TO SELL THE MORTGAGED STOCK AS PER EXHIBIT NO. LAW 17. ALL THESE MENTIONED FIVE AGREEMENTS WERE DATED ON THE SAME DAY - APRIL 5, 1968. FURTHERMORE, IT IS PLAUSIBLE THAT ON THAT SAME DAY THE THIRD PLAINTIFF ALSO PRESENTED TO THE CHEMICAL BANK THE STOCK TRANSFER DEED IN WHICH THE THIRD PLAINTIFF SIGNED AS THE TRANSFEROR LEAVING THE SPACE FOR THE TRANSFEREE'S SIGNATURE BLANK. LATER ON DECEMBER 5, 1968 THE CHEMICAL BANK MADE A LETTER TO THE THIRD PLAINTIFF DEMANDING REPAYMENT IN ACCORDANCE WITH THE TWO BILLS OF EXCHANGE TO BE MADE BY DECEMBER 6, 1968 AS PER EXHIBIT NO. LAW 19; A COPY OF WHICH WAS ALSO FURNISHED TO AID.
THE THIRD PLAINTIFF DID NOT MAKE THE REPAYMENT.. ON DECEMBER 10, 1968 THE CHIMICAL BANK CLAIMED A PAYMENT OF US$1,500,000 FROM AID UPON JUSTIFICATION THAT THE MORTGAGED STOCK WAS WORTHLESS AS PER EXHIBIT NO. LAW 9. AID MADE THE PAYMENT TO THE CHIMICAL BANK ON DECEMBER 20, 1968. THE CHEMICAL BANK REQUESTED THE FOURTH DEFENDANT TO TRANSFER ALL THE SHARES OF STOCK TO THE CHEMICAL BANK AND TO FURTHER TRANSFER FROM THE CHEMICAL BANK TO AID, AND TO SEND THE STOCK TRANSFER DEED TO THE CHEMICAL BANK AS PER EXHIBIT NO. LAW 10 (LAW 35). THE FOURTH DEFENDANT NOTIFIED THE CALABRIAN (THAILAND) COMPANY LIMITED ON DECEMBER 23, 1968 THAT THE FOURTH DEFENDANT WOULD TAKE THE SAID ACTION AS PER EXHIBIT NO. LAW 6 KAW. THE CALABRIAN (THAILAND) COMPANY LIMITED SENT A LETTER DATED DECEMBER 26, 1968 TO THE FOURTH DEFENDANT INFORMING THAT THE TRANSFER OF THE SAID STOCK WOULD REQUIRE PRIOR APPROVAL FROM THE BOARD OF DIRECTORS OF THE COMPANY, AND THAT THE BOARD OF DIRECTORS HAD MADE A RESOLUTION TO REFUSE ANY STOCK TRANSFER TO THE CHEMICAL BANK AND TO AID AS PER EXHIBIT NO. LAW 7 KAW.
NEVERTHELESS, THE FOURTH DEFENDANT ENTERED INTO THE STOCK HOLDER WHITEHOUSE

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OMB-01 TRSE-00 CIAE-00 INR-07 NSAE-00 IGA-01 SP-02

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P 220940Z JUL 75
FM AMEMBASSY BANGKOK
TO SECSTATE WASHDC PRIORITY 8147

UNCLAS SECTION 4 OF 5 BANGKOK 14752

E.O. 11652: N/A

ROSTER THAT THE CHEMICAL BANK ACCEPTED THE TRANSFER OF 512,070
SHARES OF STOCK FROM THE THIRD PLAINTIFF ON DECEMBER 20, 1968
AS PER EXHIBIT NO. JAW 30. AND AID ACCEPTED THE TRANSFER OF
THESE SHARES OF STOCK FROM THE CHEMICAL BANK ON THE SAME DAY AS
PER EXHIBIT NO. JAW 31 AND JAW 32. THE FIRST DEFENDANT, WHO
REPRESENTED AID, REQUESTED THE DIRECTORS OF THE CALABRIAN
(THAILAND) COMPANY LIMITED TO CALL A STOCKHOLDERS MEETING. THE
DIRECTORS DID NOT CALL THE MEETING; THE FIRST DEFENDANT THEREFORE CAL
LED
THE GENERAL MEETING OF STOCK-HOLDERS. THE GENERAL MEETING OF
STOCKHOLDERS MADE A RESOLUTION ON JANUARY 31, 1969 TO REMOVE THE
PRECEDING BOARD OF DIRECTORS FROM OFFICE AND TO APPOINT THE FIRST,
SECOND AND THIRD DEFENDANTS THE NEW BOARD OF DIRECTORS. THEN APPLIED
TO THE CENTRAL PARTNERSHIP AND COMPANY REGISTRAR, DEPARTMENT OF
COMMERCE. THE CENTRAL PARTNERSHIP AND COMPANY REGISTRAR MADE THE
REGISTRATION ON FEBRUARY 3, 1969 AS PER EXHIBIT NO. JAW 29.
THE CASE HAS A QUESTION AS TO WHETHER OR NOT THE CONVOCATION OF
THE GENERAL MEETING OF STOCKHOLDERS BY THE FIRST DEFENDANT,
THE REPRESENTATIVE OF AID, WAS LAWFUL. SECTION 1173OF THE
CIVIL AND COMMERCIAL CODE PROVIDES THAT THE PERSON WHO MAY CALL
A SPECIAL MEETING MUST BE A SOTCKHOLDER. SO THE NEXT QUESTION
WOULD BE WHETHER OR NOT AID WAS A LAWFUL STOCKHOLDER. IN
OTHER WORDS, WHETHER AID ACCEPTED THE TRANSFER OF THE STOCK
LAWFULLY. IT IS APPARENT THAT THE STOCK AT ISSUE IS OF THE
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TYPE THAT REQUIRES THE NAME OF THE HOLDER IN THE STOCK CERTIFI-
CATE AS PER EXHIBITS NOS. LAW 32 KAW, LAW 34 KAW, LAW 36 KAW,
LAW 38 KAW, LAW 40 KAW AND LAW 42 KAW. IT IS PROVIDED IN THE SECTION
1129 OF THE CIVIL AND COMMERCIAL CODE THAT "STOCK MAY BE
TRANSFERRED WITHOUT CONSENT OF THE COMPANY, UNLESS IT IS OF THE
TYPE THAT REQUIRES THE NAME OF THE HOLDER IN THE STOCK CERTIFICATE
WHERE IT IS OTHERWISE PROVIDED BY THE BY-LAWS OF THE COMPANY."
THE BY-LAWS OF THE CALABRIAN (THAILAND) COMPANY LIMITED PROVIDE

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THAT "DIRECTORS MAY REFUSE THE REGISTRATIONOF ANY STOCK TRASNFER
TO A PERSON WHO IS DISAPPROVED BY THE DIRECTORS TO BECOME A
PARTNER OF THE COMPANY." IT APPEARS AS A FACT THAT WHEN THE
STOCK AT ISSUE OF THE THIRD PLAINTIFF WAS TRANSFERRED TO THE
NAME OF THE CHEMICAL BANK AND FURTHER TRANSFERRED TO AID, THE
BOARD OF DIRECTORS OF DIRECTORS OF THE CALABRIAN (THAILAND) COMPANY
LIMITED HAD CONVEYED A LETTER REFUSING THE REGISTRATION OF
THE SAID STOCK TRANSFER AS PER EXHIBIT NO. LAW 7 KAW. THE COURT OF
APPEAL THEREFORE PROCLAIM AN OPINION THAT AID ACCEPTED THE
TRANSFER OF THE STOCK AT ISSUE BY VIOLATING THE RULES OF LAW
AND BY -LAWS OF THE COMPANY, AND THEREFORE WAS THE UNLAWFUL
STOCKHOLDER; THE THIRD PLAINTIFF WAS STILL THE HOLDEROF THE STOCK
AT ISSUE. THE COURT OF APPEAL DOES NOT CONCUR IN THE OPINION
OF THE COURT OF FIRST INSTANCE THAT THE EXHIBIT NO. LAW 7 KAW
WAS ONLY AN UNSUBSTANTIATED REFUSAL AND THAT THE REASON BROUGHT
UP FOR REFUSAL WAS NOT TRUE TO THE BY-LAWS OF THE COMPANY,
BECAUSE, ACCORDING TO THE RULES OF LAW AND BY-LAWS OF THE
COMPANY, THE DIRECTORS OF THE COMPANY ARE ENTITLED TO THE SOLE
PRIVILEGE OVER THE REFUSAL OF STOCK TRANSFER. IN ADDITION,
AS FOR THE OPINIONOF THE COURT OF FIRST INSTANCE IN TERMS OF
THE COMPANY REFUSAL OF THE STOCK TRANSFER, WHEREAS AID
HAD REPAID THE DEBITS FOR THE THIRD PLAINTIFF, BEING UNREASONABLE
WHILE A DIRECTOR OF THE THIRD PLAINTIFF SERVED AS A DIRECTOR IN
THE COMPANY, IT APPEARS AS A FACT THAT WHEN THE TRANSFER OF THE
SAID STOCK WAS ABOUT TO BE EFFECTUATED, THE THIRD PLAINTIFF,
THE CHEMICAL BANK AND AID BEGAN TO DISAGREE ON THE INTERPRETATION
OF THE ABOVE STATED FIVE AGREEMENTS IN REGARD TO THE STOCK
AT ISSUE, SPECIFICAALLY IN THE POINT AS TO WHETHER THE PRESENTATION
OF THE STOCK AT ISSUE BY THE THIRD PLAINTIFF TO THE CHEMICAL
BANK WAS THE TRANSFER OR MORTGAGE (OR PLEDGE), AND IN THE
POINT AS TO HOW THE ASSIGNED SHARES OF STOCK WOULD BE EXECUTED
WHEN THE THIRD PLAINTIFF DID NOT REPAY THE LOAN
BORRROWED FROM THE CHEMICAL BANK WHICH WAS THE ISSUE REQUIRING
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SEVERAL PROVISIONS IN SEVERAL AGREEMENTS, I.E., EXHIBIT NO.
JAW 14, SECTIONS 2 AND 5, EXHIBIT NO. JAW 15, SECTIONS 2 AND 14
AND EXHIBIT NO. LAW 17, SECTIONS 2 AND 3, ETC., TO BE CONSIDERED.
THEREFORE, IT IS NOT AGREEABLE TO THE COURT OF APPEAL TO RULE
THAT THE REFUSAL OF THE BOARD OF DIRECTORS OF THE CALABRIAN
(THAILAND) COMPANY LIMITED TO THE SAID STOCK TRANSFER WAS NOT
JUSTIFICABLE. AS FOR THE FOURTH DEFENDANT CLAIMING THAT, IN THE
WAY OF PRACTICE OF THE FOURTH DEFENDANT, THE FOURTH
DEFENDANT WAS NOT REQUIRED TO REQUEST CONSENT OR APPROVAL
FROM THE COMPANY FOR A STOCK TRANSFER; THE FOURTH DEFENDANT
MIGHT PRACTISE IN SUCH A MANNER AS FAR AS THE DIRECTORS OF THE
COMPANY DID NOT EXERCISE THE PRIVILEGE IN REFUSING THE REGISTRATION
OF THE STOCK TRANSFER AS MADE BY THE FOURTH DEFENDANT. BUT
WHEN THE SECTION 1129 AND THE BY-LAWS OF THE COMPANY WERE IN
EXISTENCE AS STATED EARLIER AND THE DIRECTORS OF THE COMPANY

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HAD REFUSED THE TRANSFER OF THE STOCK AT ISSUE, IT WOULD NOT
BE POSSIBLE TO HAVE THE LAWS AND THE COMPANY'S BY -LAWS
CANCELLED BY THE PRACTICE. WHEN AID WAS NOT A LAWFUL STOCKHOLDER
AS RULED, THE FIRST DEFENDANT WHO WAS THE AID REPRESENTATIVE
THUS DID NOT HAVE THE RIGHT TO CONVOKE THE SPECIAL MEETING.
HENCE, THE CONVOCATION OF THE GENERAL MEETING OF SOTCKHOLDERS
ON JANUARY 31, 1969 WAS VIOLATING THE SECTION 1173 OF THE CIVIL
AND COMMERCIAL CODE AND THE DECISION THEREOF IN TERMS
OF REMOVING THE PRECEDING BOARD OF DIRECTORS AND APPOINTING
THE FIRST, SECOND AND THIRD DEFENDANTS THE NEW BOARD OF
DIRECTORS WAS UNLAWFUL. THE APPEAL OF THE PLAINTIFF WAS
PLAUSIBLE. THE FIRST AND SECOND PLAINTIFFS WHO WERE
DIRECTORS AND THE THIRD PLAINTIFF WHO WAS THE STOCKHOLDER ON THE
DAY WHEN THE MEETING MADE A RESOLUTION WOULD HAVE THE RIGHT UNDER
THE SECTION 1195OF THE CIVIL AND COMMERCIAL CODE TO
REQUEST THE COURT TO REVOKE THE RESOLUTION OF THE UNLAWFUL
GENERAL MEETING; AND THE PLAINTIFF SUBMITTED THE REQUEST WITHIN
THE PERIOD OF ONE MONTH AFTER THE DAY THE RESOLUTION WAS MADE.
AS FOR THE DEFENDANTS REFERRING TO THAT THE PLAINTIFFS WERE
NOT EMPOWERED TO SUE THE DEFENDANTS PERSONALLY, WHEN IT CAN
BE HEARD THAT THE PLAINTIFFS HAS A GROUND TO EXERCISE THEIR
WHITEHOUSE

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ACTION OPIC-06

INFO OCT-01 EA-10 ISO-00 EB-07 JUSE-00 L-03 AID-05 COME-00

OMB-01 TRSE-00 CIAE-00 INR-07 NSAE-00 IGA-01 SP-02

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E.O. 11652: N/A

PASS OPIC
RIGHT THROUGH THE COURT, ALTHOUGH THE CHARGE IS TAKEN TO THE

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COURT IN THE MANNER THAT A DISPUTE OCCURRED, IT IS STILL NOT RUINING THE CHARGE OF THE PLAINTIFFS. IN THIS CASE THE PLAINTIFFS CHIEFLY REQUEST THAT THE DECISION OF THE GENERAL MEETING HELD ON JANUARY 31, 1975 BE REVOKED. THEREFORE, THE DISPUTE AMONG THE THIRD PLAINTIFF, CHEMICAL BANK AND AID IN REGARD TO THE PROVISIONS OF THE FIVE AGREEMENTS AS MENTIONED EARLIER IS NOT NECESSARY TO BE RULED.

IT IS INVERTEDLY RULED THAT THE REGISTRATION MADE IN THE STOCKHOLDER ROSTER IN TERMS OF AID BEING A STOCKHOLDER BE UNLAWFUL AND BECOMING NULL AND VOID, THE CONVOCATION OF THE SPECIAL MEETING BY THE FIRST DEFENDANT BE UNLAWFUL, THIS SPECIAL MEETING BE ACCORDING TO THE LAW NULL AND VOID, THE MINUTES AND RESOLUTION OF THE SPECIAL MEETING OF THE CALABRIAN (THAILAND) COMPANY LIMITED RATED JANUARY 31, 1969 BE REVOKED, THE REGISTER OF THE DIRECTORS OF THE CALABRIAN (THAILAND) COMPANY LIMITED DATED JANUARY 31, 1969 BE REPEALED AND THE PRECEDING STATUS OF THE PLAINTIFFS BE REVIVED. THE FIFTH PLEA OF THE PLAINTIFF IS REJECTED, BECAUSE IT COULD BE TAKEN CARE OF BY THE PLAINTIFF. THE COURT FEES FOR BOTH COURTS ARE TO BE WRITTEN OFF.
NAI PHAISAN KUMANWISAI, ADVISOR
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NAI PRASERT WARAPHON
NAI JIRAYU PHATHRA MAHAWINITCHAIMONTRI
WHITEHOUSE

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